

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 04-0452****Sales and Use Tax
For Tax Years 2003**

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ISSUE**I. Sales and Use—Aircraft Purchase**

Authority: 45 IAC 2.2-5-15

Taxpayer protests the imposition of sales tax on the purchase of an aircraft.

STATEMENT OF FACTS

Taxpayer purchased an aircraft, but did not pay sales tax on the purchase. Taxpayer claimed that the purchase was exempt from sales tax because the aircraft was to be used for rental or leasing to others. The Indiana Department of Revenue ("Department") conducted an investigation regarding the rental or leasing of the aircraft and determined that there was insufficient evidence to support the claim of rental or leasing as the use of the aircraft. As a result of this investigation, the Department denied the claim for exemption and issued a proposed assessment for use tax on the purchase of the aircraft. Taxpayer protests the assessment. Further facts will be supplied as required.

DISCUSSION**I. Sales and Use—Aircraft Purchase**

Taxpayer purchased an aircraft for one hundred ninety four thousand, three hundred and sixty dollars (\$194,630.00) and claimed a sales tax exemption. Taxpayer formed a second corporation using taxpayer's Taxpayer Identification number and Federal Identification Number to register with the Department. The second corporation then leased the aircraft to a third party which rented the aircraft, including rentals to the individual who owned both the taxpayer corporation and the related second corporation. The Department also compared a non-related aircraft rental company's rate for the same type of aircraft, to the rate taxpayer was charged for its use of the

aircraft. The rental rate was far below the market rate. The Department determined that taxpayer was using the aircraft and denied the exemption. Taxpayer protests the denial.

The exemption is found in 45 IAC 2.2-5-15, which states:

- (a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.
- (b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:
 - (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
 - (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
 - (3) The property is resold, rented or leased in the same form in which it was purchased
- (c) Application of general rule.
 - (1) The tangible personal property must be sold to a purchaser who makes the purchase with the intention of reselling, renting or leasing the property. This exemption does not apply to purchasers who intend to consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property.
 - (2) The purchaser must be occupationally engaged in reselling, renting or leasing such property in the regular course of his business. Occasional sales and sales by servicemen in the course of rendering services shall be conclusive evidence that the purchaser is not occupationally engaged in reselling the purchased property in the regular course of his business.
 - (3) The property must be resold, rented or leased in the same form in which it was purchased.

Taxpayer states that it was in the business of leasing aircraft and therefore qualifies for the exemption provided by 45 IAC 2.2-5-15. 45 IAC 2.2-5-15(c) explains the application of the rule. One condition is 45 IAC 2.2-5-15(c)(1), which states that the exemption does not apply to purchasers who consume or use the property or add value to the property through the rendition of services or performance of work with respect to such property. The Department notes that the individual who signed as lessor on the leasing agreement used the aircraft twenty four times in a roughly ten month period. Combined with the rental rate far below normal market rates, taxpayer does not satisfy 45 IAC 2.2-5-15-(c)(1) and does not qualify for the leasing exemption.

In its protest letter, taxpayer states that it has gone to extraordinary efforts to comply with the voluminous documents requested by the Department in the course of its investigation. At no point did the Department receive documentation explaining the how the parties arrived at such a low rental rate, or any documentation which would explain that the rental rate was close to the

going market rate. Taxpayer states in its protest that it was proactively trying to comply with the Department's regulations and relied on a Revenue Ruling issued by the Department to a non-related party.

The Department notes that Revenue Rulings apply to the taxpayers to whom they are issued and may not be relied upon even by that taxpayer if the facts provided are not correct or if they change. If a taxpayer relies on a Revenue Ruling but has substantially different fact situation in any material respect, the Revenue Ruling offers no protection. In this case, the Revenue Ruling explained that the taxpayer it was issued to would not use the aircraft for its own use, but would exclusively hold the aircraft for rental to others. As previously explained, the taxpayer in this protest did not exclusively rent to others

In conclusion, taxpayer was using the aircraft itself, not exclusively renting or leasing to others. Also, taxpayer was paying a rental rate far below the going market rate. Taxpayer does not qualify for the exemption found in 45 IAC 2.2-5-15.

FINDING

Taxpayer's protest is denied.

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